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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 MICHAEL MOI, an individual,

10 Plaintiff,

11 v.

12 CHIHULY STUDIO, INC., a Washington
13 corporation; DALE CHIHULY,
14 individually and as a married person;
LESLIE CHIHULY, individually and as a
married person,

15 Defendants.

No. 2:17-cv-00853

DEFENDANTS' ANSWER AND
COUNTERCLAIM

16
17 CHIHULY, INC., a Washington
18 corporation; DALE CHIHULY,
individually,

19 Counterclaim-
20 Plaintiffs,

21 v.

22 MICHAEL MOI, an individual,

23 Counterclaim-
24 Defendant.

25
26
ANSWER AND COUNTERCLAIM
(No. 2:17-cv-00853) – 1

23641-0040/135552868.4

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1 **ANSWER**

2 Defendants Chihuly, Inc., Dale Chihuly and Leslie Chihuly (collectively “Chihuly” or
3 “Defendants”) answer Plaintiff’s Complaint as follows in paragraphs numbered to correspond to
4 the paragraph numbers in said Complaint.

5 **NATURE OF THE ACTION**

6 Plaintiff includes a lengthy introduction to which no response is required. To the extent a
7 response is required, Defendants deny any allegations included in the introduction appearing
8 before the first numbered paragraph of Plaintiff’s complaint.

9 **I. PARTIES**

10 1.1 Defendants have insufficient information to admit or deny the allegations in
11 Paragraph 1.1 and on that basis deny the allegations.

12 1.2 Defendants deny that an entity with the name Chihuly Studio, Inc. exists as a
13 Washington corporation doing business in King County, Washington. Defendants admit that
14 Chihuly Studio is a registered trade name for Chihuly, Inc. Defendants further admit that King
15 County is located within the Western District of Washington. Defendants deny any remaining
16 allegations in Paragraph 1.2.

17 1.3 Defendants admit that Dale Chihuly is a resident of King County, Washington
18 and is the Chairman of Chihuly, Inc. Defendants further admit that Dale resides within the
19 Western District of Washington. Defendants deny any remaining allegations in Paragraph 1.3.

20 1.4 Defendants admit that Leslie Chihuly is a resident of King County, Washington
21 and is the Chief Executive Officer for Chihuly, Inc. Defendants further admit that Ms. Chihuly
22 resides within the Western District of Washington and that she is married to Dale. Defendants
23 deny any remaining allegations in Paragraph 1.4.

24 **II. JURISDICTION AND VENUE**

25 2.1 Defendants admit that this Court has jurisdiction under 28 U.S.C. §§ 1331 and
26 1338(a) because Plaintiff purports to bring claims under United States Copyright Act, 17 U.S.C.

§ 101 et seq. Defendants also admit that this Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a). Defendants deny the remaining allegations in Paragraph 2.1.

2.2 Defendants admit that venue is proper in the Western District of Washington given Plaintiff's allegations regarding conduct he claims occurred in the Western District of Washington and that Defendants reside or may be found in this District. Defendants deny the remaining allegations in Paragraph 2.2.

III. FACTUAL ALLEGATIONS

3.1 Defendants have insufficient information to admit or deny the circumstances under which Dale was introduced to Plaintiff and on that basis deny those allegations. Defendants admit that Mr. O'Neill worked as a skipper on Dale's boat(s). Defendants further admit that Mr. O'Neill was employed by Chihuly between 2001 and 2015, and that before that he was employed at the Salmon Bay Boat yard. Defendants deny the remaining allegations in Paragraph 3.1.

3.2 Defendants admit that Plaintiff worked as a handyman for Chihuly, Inc. and Dale to complete odd jobs from time to time, including roof repairs and cleaning. Defendants admit that Plaintiff was properly compensated for that work. Defendants have insufficient information to admit or deny the allegations regarding decommissioning an oil tank and on that basis deny those allegations. Defendants deny the remaining allegations in Paragraph 3.2.

3.3 Defendants deny the allegations in Paragraph 3.3.

3.4 Defendants admit that Dale has, over the years, directed and participated in numerous sessions where he created (and continues to create) his drawings. Defendants further admit that some of those sessions occurred on the deck or in the Blue Room of the Boathouse. Defendants further admit that there are numerous tasks that must be completed prior to beginning a drawing session including setting out the tools and materials necessary for Dale to create his art. Defendants have insufficient information to admit or deny whether Plaintiff misappropriated

1 Dale's paint from the locations to which he had access during his work as a handyman.

2 Defendants deny the remaining allegations in Paragraph 3.4.

3 3.5 Defendants admit that Dale has long used assistants to assist him in executing his
4 artistic vision. Some of these may act as painting assistants by laying down backgrounds or
5 applying other imagery but always in the well-established artistic vocabulary established by
6 Dale. Defendants deny that Plaintiff ever worked as a painting assistant. Defendants deny the
7 remaining allegations in Paragraph 3.5.

8 3.6 Defendants admit that Dale signs his drawings that he deems worthy of his
9 signature. Defendants deny the remaining allegations in Paragraph 3.6.

10 3.7 Defendants admit that the preparatory process must be performed for each session
11 and that assistants may ensure that Dale's drawings are properly prepared to dry and may move
12 the final pieces. Defendants deny the remaining allegations in Paragraph 3.7.

13 3.8 Defendants have insufficient information to admit or deny whether Plaintiff
14 installed deck lighting at the Boathouse and on that basis deny that allegation. Defendants deny
15 the remaining allegations in Paragraph 3.8.

16 3.9 Defendants admit that the images in Paragraph 3.9 appear to have been taken
17 from Chihuly's Facebook page. Defendants admit that Dale created paintings featuring pumpkin
18 or jack-o-lantern shapes, but deny the remaining allegations in Paragraph 3.9.

19 3.10 Defendants admit that photographers and videographers have been present at
20 some of Dale's drawing sessions. Defendants deny the remaining allegations in Paragraph 3.10.

21 3.11 Defendants admit that access was not routinely granted to Dale's living quarters.
22 Defendants deny that studio staff or glassblowers were prohibited from accessing the Blue Room
23 or the deck. Defendants further deny that Mr. Moi was allowed "unfettered access" to
24 "Chihuly's private quarters" but admit that Mr. Moi was provided with access to Dale's living
25 quarters to perform repairs in his role as a handyman. Defendants deny the remaining allegations
26 in Paragraph 3.11.

1 3.12 Defendants deny the allegations in Paragraph 3.12.

2 3.13 Defendants have insufficient information to admit or deny what Plaintiff may
3 have thought and on that basis deny those allegations. Defendants deny the remaining
4 allegations in Paragraph 3.13.

5 3.14 Defendants admit that Dale has been diagnosed with bipolar disorder, symptoms
6 of which include depression, hyperactivity and/or mania, paranoia, impaired judgment and
7 irrational behavior. Defendants further admit that Dale and Mrs. Chihuly have a son.
8 Defendants deny the remaining allegations in Paragraph 3.14.

9 3.15 Defendants have insufficient information to admit or deny the allegations in
10 Paragraph 3.15 and on that basis deny those allegations.

11 3.16 Defendants deny the allegations in Paragraph 3.16.

12 3.17 Defendants admit that Mr. O'Neill was Vice President of Chihuly Studio but have
13 insufficient information to admit or deny the allegations regarding Plaintiff's alleged home
14 remodel for Mr. O'Neill and on that basis deny those allegations. Defendants deny the
15 remaining allegations in Paragraph 3.17.

16 3.18 Defendants admit that Victor Humeniuk was hired, let go, re-hired and is
17 currently employed by Chihuly as a facilities manager. Defendants have insufficient information
18 to admit or deny the allegations regarding Mr. Humeniuk's position at Salmon Bay Boat Yard or
19 how he met Mr. O'Neill. Defendants deny the remaining allegations in Paragraph 3.18.

20 3.19 Defendants admit that Plaintiff did project work as a handyman for Dale and
21 Chihuly. Defendants further admit that Kellie Moi performed similar repair and cleaning work.
22 Defendants deny the remaining allegations in paragraph 3.19.

23 3.20 Defendants agree that the size, scale and complexity of Dale's paintings has
24 increased but deny the remaining allegations in Paragraph 3.20.

1 3.21 Defendants admit that demand for Dale's work is strong and that the creation of
2 Dale's works can be physically demanding. Defendants deny the remaining allegations in
3 Paragraph 3.21.

4 3.22 Defendants admit that Billy O'Neill, Piper O'Neill and Damien Villarreal
5 regularly worked with Dale under his direction, and that others also participated in the drawing
6 process from time to time. Defendants deny the remaining allegations in Paragraph 3.22.

7 3.23 Defendants admit that in January 2015, Mr. O'Neill's employment at Chihuly,
8 Inc. ended. Defendants have insufficient information to admit or deny allegations regarding
9 Plaintiff's mental state and on that basis deny those allegations. Defendants deny the remaining
10 allegations in Paragraph 3.23.

11 3.24 Defendants admit that in late 2016, Plaintiff encountered Dale and Mr. Roswell in
12 the parking lot of the Boathouse, and thereafter spoke to Mr. Remaly. Defendants deny the
13 remaining allegations in Paragraph 3.24.

14 3.25 Defendants admit that Mr. Remaly spoke to Mr. Moi at some point in late 2016 in
15 the parking lot of the Ballard Studio. Defendants have insufficient information to admit or deny
16 the remaining allegations in Paragraph 3.25 and on that basis deny those allegations.

17 3.26 Defendants admit that Mr. Moi called Mr. Humeniuk on December 24, 2016 to
18 discuss work on a vintage car. Defendants deny the remaining allegations in Paragraph 3.26.

19 3.27 Defendants further admit that Leslie Chihuly has been actively managing the
20 company as President of Chihuly, Inc. since 2008 but have insufficient information to admit or
21 deny the allegations in Paragraph 3.27 and on that basis deny the allegations.

22 3.28 Defendants admit that Moi never informed Leslie Chihuly or others at Chihuly,
23 Inc. about his alleged conversations but have insufficient information to admit or deny the
24 remaining allegations regarding Plaintiff's mental state and that basis deny the remaining
25 allegations in Paragraph 3.28.

26 3.29 Defendants deny the allegations in Paragraph 3.29.

IV. CAUSES OF ACTION

4.1 Paragraph 4.1 requires no answer. To the extent an answer is required, Defendants deny the allegation in Paragraph 4.1.

4.1.1 Paragraph 4.1.1 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 4.1.1.

4.1.2 Paragraph 4.1.2 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 4.1.2.

4.1.3 Defendants deny the allegations in the first sentence of Paragraph 4.1.3. The remainder of Paragraph 4.1.3 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations in Paragraph 4.1.3.

4.2 Paragraph 4.2 requires no answer. To the extent an answer is required, Defendants deny the allegation in Paragraph 4.2.

4.2.1 Defendants deny the allegations in the first sentence of Paragraph 4.2.1. The last two sentences of Paragraph 4.2.1 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations in Paragraph 4.2.1.

4.2.2 Paragraph 4.2.2 contains a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 4.2.2.

4.3 Paragraph 4.3 requires no answer. To the extent an answer is required, Defendants deny the allegation in Paragraph 4.3.

4.3.1 Paragraph 4.3.1 requires no answer. To the extent an answer is required, Defendants deny the allegation in Paragraph 4.3.1.

1 4.3.2 Defendants admit that there is a real and actual controversy between the
2 parties regarding co-authorship and co-ownership of Dale's works. Defendants deny any
3 remaining allegations in Paragraph 4.3.2.

4 4.3.3 Defendants deny the allegations in Paragraph 4.3.3.

5 4.3.4 Paragraph 4.3.4 contains legal conclusions to which no response is
6 required. To the extent a response is required, Defendants deny the allegations in Paragraph
7 4.3.4.

8 4.3.5 Paragraph 4.3.5 contain a legal conclusion to which no response is
9 required. To the extent a response is required, Defendants deny the allegations in Paragraph
10 4.3.5.

11 4.3.6 Paragraph 4.3.6 contains a legal conclusion to which no response is
12 required. To the extent a response is required, Defendants deny the allegations in Paragraph
13 4.3.6.

14 4.3.7 Paragraph 4.3.7 contains a legal conclusion to which no response is
15 required. To the extent a response is required, Defendants deny the allegations in Paragraph
16 4.3.7.

17 4.3.8 Defendants admit that Plaintiff was a handyman and cleaner for Chihuly
18 and Dale. Defendants further admit that because Plaintiff did not participate in the creation of
19 Dale's art that there are no written agreements between the Defendants and Plaintiff regarding
20 any of Dale's art, including, but not limited to an assignment of rights. Defendants deny the
21 remaining allegations in Paragraph 4.3.8.

22 4.3.9 Defendants admit that Plaintiff is not a co-owner or joint author of any of
23 Dale's art, including drawings. Defendants deny the remaining allegations in Paragraph 4.3.9.

24 4.3.10 Defendants admit that there is an actual controversy between Plaintiff and
25 Defendants regarding Plaintiff's claims that he is a co-author and co-owner of Dale's drawings.
26 Defendants deny any remaining allegations in Paragraph 4.3.10.

1 4.3.11 Paragraph 4.3.11 contains legal conclusions to which no response is
2 required. To the extent a response is required, Defendants deny the allegations in Paragraph
3 4.3.11.

4 4.4 Paragraph 4.4 requires no answer. To the extent an answer is required,
5 Defendants deny the allegation in Paragraph 4.4.

6 4.4.1 Paragraph 4.4.1 requires no answer. To the extent an answer is required,
7 Defendants deny the allegation in Paragraph 4.4.1.

8 4.4.2 Defendants deny the allegations in Paragraph 4.4.2.

9 4.4.3 Defendants deny the allegations in Paragraph 4.4.3.

10 4.4.4 Defendants deny the allegations in Paragraph 4.4.4.

11 4.5 Paragraph 4.5 requires no answer. To the extent an answer is required,
12 Defendants deny the allegation in Paragraph 4.5.

13 4.5.1 Paragraph 4.5.1 requires no answer. To the extent an answer is required,
14 Defendants deny the allegation in Paragraph 4.5.1.

15 4.5.2 Paragraph 4.5.2 contains a legal conclusion to which no response is
16 required. To the extent a response is required, Defendants deny the allegations in Paragraph
17 4.5.2.

18 4.5.3 Defendants deny the allegation in Paragraph 4.5.3.

19 4.5.4 Defendants deny the allegation in Paragraph 4.5.4.

20 4.5.5 Paragraph 4.5.5 contains a legal conclusion to which no response is
21 required. To the extent a response is required, Defendants deny the allegations in Paragraph
22 4.5.5.

23 4.5.6 Paragraph 4.5.6 contains legal conclusions to which no response is
24 required. To the extent a response is required, Defendants deny the allegations in Paragraph
25 4.5.6.
26

1 4.5.7 Paragraph 4.5.7 contains a legal conclusion to which no response is
2 required. To the extent a response is required, Defendants deny the allegations in Paragraph
3 4.5.7.

4 **AFFIRMATIVE DEFENSES**

5 Chihuly further responds to Plaintiff's Complaint by alleging the following affirmative
6 defenses. Chihuly reserves the right to supplement this list as the case proceeds:

7 4.6 The Complaint fails to state a claim upon which relief may be granted.

8 4.7 Applicable statutes of limitations are a bar to Plaintiff's claims, including claims
9 to ownership of copyright in various works of art under the Copyright Act.

10 4.8 Plaintiff's Complaint is barred by laches and equitable estoppel.

11 4.9 Plaintiff's Complaint is barred by the statute of frauds.

12 4.10 Plaintiff's Complaint is barred by unclean hands and undue influence. Plaintiff
13 asserts that he was placed in a position of trust and confidence by Dale and that he was aware of
14 Dale's struggles with mental health. While Defendants deny the existence of any promise as
15 described by Plaintiff, by Moi's own admission he now seeks to profit from an alleged promise
16 that he knowingly obtained from a person who at the time was suffering from mental illness. He
17 then kept that promise secret for more than 17 years from those responsible for protecting Dale's
18 interests. As a result, even if Mr. Moi's claims were true, he may not recover in either law or
19 equity.

20 4.11 Plaintiff has waived or abandoned any rights he claims to have under the
21 Copyright Act.

22 **COUNTERCLAIM**

23 For their counterclaim Dale Chihuly and Chihuly, Inc. allege the following:

24 **I. INTRODUCTION**

25 1. This lawsuit is not about Plaintiff's entitlement to rightful compensation. Rather,
26 it is about Plaintiff threatening to go public with information he considers embarrassing,

1 sensational, and harmful to Defendants unless his demand for \$21 million is accepted in return
2 for his silence. Counterclaim Plaintiffs Chihuly, Inc. and Dale Chihuly (collectively “Chihuly”)
3 bring this action for declaratory relief against Counterclaim Defendant Michael Moi, a former
4 contractor and handyman for Chihuly.

5 2. Dale Chihuly is an internationally renowned artist represented in over 200
6 museum collections worldwide. His exhibitions have transformed the historic streets of Venice
7 (Chihuly over Venice) and marveled millions in the citadel of Jerusalem (Chihuly in the Light of
8 Jerusalem).

9 3. Dale is recognized for having revolutionized the creation of glass art as well as
10 the way people interact with art installations. His signature basket, cylinder, float and reed forms
11 have appeared for decades in both his glass art and his drawings. From the beginning of his
12 career his drawings have been an integral part of his art, carrying forward the unique shapes and
13 symbols that have defined his glass art.

14 4. Dale does not work alone. He is well known for his collaborative approach to art,
15 pioneering the adoption of the studio glass movement in the United States and ultimately Team
16 Chihuly. Dale’s collaborative approach began in part due to necessity: In 1976 an automobile
17 accident left him with 258 stitches to his face, permanent damage to his right foot and leg, and
18 blinded in his left eye. A 1979 accident severely dislocated his right shoulder and left him
19 unable to carry the weight of the glass blow pipe. These physical disabilities forced him to rely
20 more heavily on others, often using his drawings as a way of communicating with a team. The
21 team approach became more of a necessity as the glass art installations (up to 150 lbs for an
22 individual element and thousands of pounds for installations) and drawings (up to 6’ by 8’ with
23 some series painted on heavy plexiglass) became larger. Necessity is often called the mother of
24 invention and, just as with other great artists before him (e.g. Michelangelo, Andy Warhol), Dale
25 discovered that the use of assistants gave him a different, often unique perspective which better
26 enabled him to execute his vision.

1 5. While Dale's physical challenges are publicly known, less well known is his
2 private struggle with mental illness. Dale has been diagnosed with bipolar disorder, symptoms
3 of which include depression, hyperactivity and/or mania, paranoia, impaired judgment and
4 irrational behavior. The disease and, more recently, Dale's advancing years have made him
5 more vulnerable to those who might take advantage of him. Dale's bipolar disorder is an issue
6 that is rarely discussed publicly. His family, friends and colleagues work to protect him both
7 from the effects of the disease and the often cruel and judgmental glare of public scrutiny. Yet
8 this desire to protect Dale has also led to his most significant vulnerability: The threat of public
9 disclosure. For this reason, Dale and his family have now decided to publicly discuss his battle
10 with mental illness. While they hope that Dale's diagnosis might comfort and inspire others who
11 also grapple with mental illness, they also hope to disarm those who might seek to exploit Dale's
12 illness and his interest in maintaining his privacy for their personal gain—such as Mr. Moi.

13 6. Mr. Moi is neither an artist, nor an author, nor co-author of Dale's works. Chihuly
14 has never sold a drawing or painting by Mr. Moi. On information and belief, Mr. Moi has never
15 sold any work of art that he created. He is a former contractor and handyman who in the course
16 of his work for Chihuly became aware of Dale's struggles with mental health and other personal
17 information. He also possesses personal and confidential private documents of Dale's that he
18 continues to hold despite Dale's demand that they be returned. Such documents allegedly
19 reflect Dale's personal struggles. Under the thin guise of this litigation, Mr. Moi is threatening
20 to make such documents public as purported "evidence" in his lawsuit unless Dale, his family,
21 and Chihuly, Inc. pay him \$21 *million* for his silence. That effort has failed, as Chihuly has
22 decided not to acquiesce to Plaintiff's threats and demands.

23 7. Mr. Moi never worked with Dale as a painting assistant, and he did not participate
24 in the creation of Dale's art. His claims are not only baseless, they are a complete fabrication
25 tendered in a calculated, cynical, and deplorable effort to prey on Dale's disability and desire for
26 privacy.

8. Chihuly therefore seeks a declaratory judgment that Mr. Moi owns no rights whatsoever in any Chihuly work, that Chihuly is the sole and rightful owner of all rights to any contested works and that Mr. Moi is responsible for attorneys' fees and all damages caused by his threats.

II. PARTIES

9. Counterclaim Plaintiff Chihuly, Inc. is a Washington corporation with its principal place of business in Seattle, Washington.

10. Counterclaim Plaintiff Dale Chihuly is an individual residing in King County, Washington.

11. Counterclaim Defendant Michael Moi is an individual residing in King County, Washington.

III. JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over Chihuly's counterclaim for declaratory relief under the Copyright Act pursuant to 28 U.S.C. §§ 1331 and 1338(a).

13. This Court has supplemental jurisdiction over Chihuly's claims under the laws of Washington pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Chihuly's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and § 1400(a) because (a) a substantial part of the events giving rise to Chihuly's counterclaims occurred in the Western District of Washington, (b) Mr. Moi resides in the Western District of Washington for the purposes of determining venue, and/or (c) Mr. Moi has a sufficient connection with the Western District of Washington to make venue proper in this district.

IV. FACTS

A. Background

15. Dale Chihuly

1 16. Born in 1941 in Tacoma, Washington, Dale was introduced to glass while
2 studying interior design at the University of Washington. After graduating from the University
3 of Washington in 1965, Dale enrolled in the first glass program in the United States at the
4 University of Wisconsin. Dale continued his studies at the Rhode Island School of Design,
5 where he earned a Master in Fine Arts. After being awarded a Fulbright Fellowship for glass
6 studies, Dale apprenticed in Italy. There, Dale observed the concept of team glassmaking, which
7 became critical to the way Dale creates his art. Inspired, Dale returned to the United States,
8 founded the glass blowing program at the Rhode Island School of Design, where he taught for a
9 decade, and co-founded the Pilchuck Glass School in Stanwood, Washington.

10 17. Dale has since received a dozen honorary doctorates in fine arts, two fellowships
11 from the National Endowment for the Arts and numerous other accolades. In 1992 he was
12 recognized as the first National Living Treasure.

13 18. Dale is further celebrated for his grand and ambitious architectural installations.
14 These installations can be viewed around the world including in Tacoma's Union Station Federal
15 Courthouse, at the Bellagio Hotel in Las Vegas, at the Atlantis Hotel in the Bahamas, at the
16 Garfield Park Conservatory in Chicago, at the Victoria and Albert Museum in London and at
17 Chihuly Garden and Glass in Seattle.

18 19. Drawing has long been an integral part of Dale's creative process and an
19 important element to his artistic personality. And, just as with his glass art, Dale has long
20 innovated with technique, medium and material with his drawings. So it is that he grabbed and
21 drew with 50 pencils at a time, drew on glass shards and has frequently employed non-art
22 materials and tools (e.g. tea, coffee, mercurochrome, charcoal, molten glass, brooms, mops, blow
23 torches, and squeeze bottles). Over time his drawings have moved from more subtle tones to
24 bigger, wilder and more colorful pieces. Below are photographs of Dale creating drawings:
25
26



Figure 1¹



Figure 2²



Figure 3³

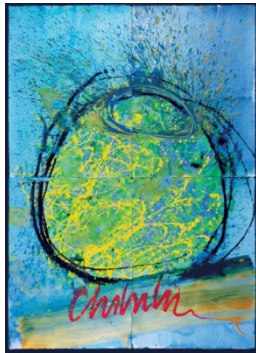
20. Dale's drawings are a major part of his work. The same archetypes that he creates in glass are carried over into his drawings, including his signature basket, cylinder, float and reed

¹ Donald Kuspit, *Chihuly* at 14-15 (1st ed. 1997).

² Screenshot of video "Chihuly Drawing," available at <https://www.youtube.com/watch?v=7b3Kg5wShec> (posted May 17, 2013).

³ Barry Rosen, *Chihuly Drawings* at 146 (2014) .

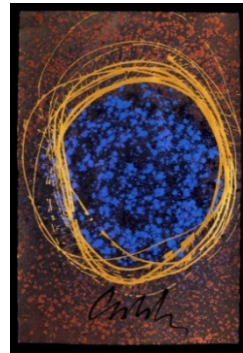
forms. These archetypes have been repeated and refined over multiple decades and are uniquely associated with Dale.



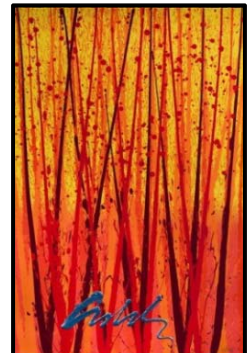
From the Basket Series



From the Cylinder Series



From the Float Series



From the Reed Series

21. Dale's drawings have been described as being "imbued with the physical properties of glass and the process of blowing glass; brilliant, deeply saturated color; light; sensations of liquidity, buoyancy, movement, and continual transformation, all combined with themes of seriality and accumulation."⁴

22. Despite decades of physically demanding work, debilitating accidents and the reality that mental illness takes a physical as well as a mental toll, Dale continues to create and produce works of art. He regularly leads drawing sessions. And, several significant new exhibitions have opened or will open this year, including at the Catalina Island Museum in Avalon, California; New York Botanical Garden in Bronx, New York; Crystal Bridges Museum of American Art in Bentonville, Arkansas; and Chihuly Sanctuary at the Fred & Pamela Buffett Cancer Center in Omaha, Nebraska. This, his 75th year, has been one of his most productive as an artist.

23. Chihuly, Inc. is the company that represents Dale and his works. Dale founded Chihuly, Inc. in 1985, when he could finally afford to invest in his own glassblowing studio and hire his own team of employees to implement his designs.

⁴ Nathan Kernan, *The Butterfly and the Spider*, in Chihuly Drawings (Barry Rosen ed., 2d ed. 2014)

1 24. Chihuly, Inc. is remarkable for, among other things, the sophistication of its
2 international business. To this end, Chihuly, Inc. engages in the business of art exhibitions,
3 gallery engagements, sales, and philanthropy all around the globe. While Dale is the artistic
4 vision behind Chihuly, Inc., due in large part to Dale's mental health issues, the business has for
5 years been run by professional managers while Dale has taken the position of Artistic Director.
6 Leslie Chihuly has been President of Chihuly Inc. since 2008 and its Chief Executive Officer
7 since 2015. Through Chihuly, Inc., Dale's art has come to be known and loved around the world,
8 providing inspiration to millions.

9 25. Counterclaim Defendant Mr. Moi

10 26. Mr. Moi was a contract handyman who was sporadically hired by Chihuly to
11 undertake odd jobs and repair work between approximately 1999 and 2015. This work included
12 general clean-up, maintenance, and repair work (e.g. repairing roofs, grading walkway, installing
13 Christmas lights, repairing downspouts, removing and replacing a water tank, cleaning glass,
14 replacing flooring in the laundry room after a leak), and some renovation and remodel work (e.g.
15 Dale's boathouse office, the Aquarium room, Dale's office and painting studio in Ballard and the
16 cabin). Most recently Moi was responsible for year-end maintenance and cleaning at various
17 facilities (pressure washing, moss removal, landscape upkeep).

18 27. On information and belief, in the course of doing these defined handyman tasks,
19 Mr. Moi became privy to details of Dale's personal life and observed some of Dale's struggles
20 with mental illness.

21 28. Mr. Moi has never been a Chihuly, Inc. employee.

22 29. Mr. Moi was never one of Dale's studio assistants, a painting assistant, or a
23 personal assistant.

24 **B. Dale Is the Sole Author of the Artworks**

25 30. Dale is the sole visionary behind his art, including his drawings. He alone is
26 responsible for the artistic vision, style and direction behind those drawings.

31. Like many artists—today (for example, Damien Hirst and Jeff Koons) and throughout history (for example, Michelangelo and Andy Warhol)—Dale does not work alone. Rather, he employs assistants who are involved in the creation of both his glass art and his drawings. Dale and Chihuly, Inc. have been open about the collaborative process Dale has been using for decades to create his art. Dale is well-known for his teamwork and his leadership of the Studio's creative process, as well as his generosity and inclusiveness, which has trained a new generation of artists and involved others in his artistic family.

32. The creation of Dale's art is physically taxing. Dale's drawings are often very large. Sometimes, Dale draws on huge pieces of Plexiglas, acrylic and/or glass weighing 25-100 pounds. Just moving these pieces from one place to another requires assistance. Below is a photograph of Dale working with one of his large scale drawings.



Figure 4⁵

33. At his drawing sessions, Chihuly provides the material and space and the assistants help to set up, refresh supplies and move materials. At times, a painting assistant might help by laying down backgrounds or applying other imagery but always in the well-

⁵ Donald Kuspit, *Chihuly* at 256 (2d ed. 2014).

1 established artistic vocabulary long-established by Dale. Assistants may also ensure the
2 drawings are properly prepared to dry or move the final pieces.

3 34. Dale personally signs each drawing. He is the final arbiter in making the
4 determination whether a work is worthy of his signature and release to the commercial market.
5 Dale has incredibly high standards for himself and his art. Dale regularly destroys works that do
6 not meet his aesthetic standards rather than have them be considered representative of his work.

7 35. Dale values his studio assistants and has, for years, celebrated and acknowledged
8 the way in which his artwork is collaboratively created. In executing Dale's vision, each studio
9 assistant knew, and knows, that Dale alone would receive attribution, that Dale alone would
10 exhibit and otherwise publish the work, and that Dale alone would market and sell the work.

11 **C. Moi's Threat to Harm Chihuly's Reputation and Commercial Success**

12 36. In February 2017, Mr. Moi, by and through his counsel (collectively "Moi")
13 demanded \$21,000,000 from Dale, falsely claiming to be a joint creator or author of "hundreds,
14 if not thousands" of Dale's paintings dating back to 1999 and further asserting that Dale had
15 "promised" to pay him for his co-authorship upon dissolution of the Chihuly company. Notably,
16 this \$21 million demand was presented to Chihuly without warning or any prior indication. The
17 written demand was the first and only notice that Chihuly or Dale had received of Mr. Moi's
18 claim—after almost 18 years of silence. There is not a single document referencing or
19 memorializing this alleged co-authorship or the purported agreement that Moi would be
20 compensated at some distant date in the future and, on information and belief, Mr. Moi had never
21 before advised others of his alleged claim of authorship or purported right to compensation
22 earned over the previous 17 years.

23 37. In presenting his demand, Mr. Moi asserted that he knew salacious details
24 regarding Dale's personal and private struggles with mental illness and had in his possession
25 various medical documents and personal papers that reflected these struggles that he considered
26 to be embarrassing. Moi further asserted that these details and documents were somehow

1 relevant to his claims. As such, they would become public during the course of any litigation
2 regarding his claims, even if, and when, the claims were ultimately found to be without merit

3 38. In explaining why he was in possession of these documents Mr. Moi stated that
4 he was placed in a position of trust and confidence by Dale and was asked to safeguard the
5 documents many years ago. As stated at Paragraph 3.14 of the Complaint: “Chihuly’s up and
6 down manic cycles were a constant . . . [and] Chihuly entrusted Moi with original faxes, legal
7 documents, and other correspondence and items of a personal nature . . . [instructing him] to
8 keep these documents safely hidden.”

9 39. Yet, when asked by Chihuly to return the documents “entrusted” to him, *which*
10 *were admittedly the sole property of Dale Chihuly*, Moi has steadfastly refused. Asserting that
11 the documents included medical papers and highly personal letters between Dale and Leslie
12 which would be “substantively uncomfortable” for Dale if released, Moi not only refused to
13 return the documents he was supposedly “safeguarding” but refused to provide Dale with copies
14 or even allow Dale’s counsel to view them. Instead, Moi insisted that he and his counsel
15 maintain exclusive control of the documents until Dale and Chihuly, Inc. acceded to certain of
16 their demands.

17 40. When Dale and Chihuly, Inc. declined to accept Moi’s demand for \$21 million or
18 negotiate some other payment to buy Moi’s silence, Moi sought to exert further pressure by
19 serving (but not filing) his state court Complaint and simultaneously serving notices of
20 deposition for Dale and Leslie Chihuly and certain third party witnesses. Moi’s state court
21 Complaint expressly included claims for violation of the Copyright Act (17 U.S.C. § 101 et seq.)
22 and the Visual Artist Rights Act (VARA) (17 U.S.C. § 106A et seq.), *despite the fact that these*
23 *claims may only be pursued in federal court*. On information and belief, Moi understood that
24 these claims lacked merit and he never intended to pursue the claims but instead was using them
25 as cover for his improper demand.
26

41. Mr. Moi's demand is nothing more than an ugly and reprehensible display of opportunism and exploitation. He is exploiting Dale's mental illness, both now and in the past, as well as Dale's advancing age and reasonable desire for a modicum of personal privacy. Under the guise of a frivolous legal claim, Mr. Moi is threatening to disclose publicly whatever personal information he might have, including confidential information about Dale's mental health and struggles and personal documents that are not rightfully in his possession and control, unless he succeeds in convincing Dale and Chihuly, Inc. to pay him a massive and unwarranted amount of money for his silence.

V. CAUSES OF ACTION

FIRST CLAIM
DECLARATORY RELIEF

42. Chihuly realleges and incorporates by reference, as if fully set forth herein, the allegations set forth in paragraphs 1-41.

43. An actual, substantial legal controversy now exists between Chihuly and Mr. Moi, regarding whether Mr. Moi is a joint author and/or co-owner under the Copyright Act of the copyrights in and to certain artistic works for which he claims rights, is entitled to rights under VARA or otherwise is entitled to any rights or monies whatsoever, whether under claims of promissory estoppel, unjust enrichment or otherwise relating to any of the disputed works. Chihuly, Inc. and Dale seek a judicial determination of their rights and legal relations pursuant to 28 U.S.C. § 2201.

44. Chihuly is entitled to a declaration that Mr. Moi is not a joint author and/or co-owner of any copyrights in works authored by Dale, has no rights relating to any such works and is not entitled to any monies therefrom.

45. Pursuant to 28 U.S.C. § 2202, Chihuly is entitled to a declaration granting any further necessary or proper relief the Court may deem appropriate.

SECOND CLAIM
CONVERSION

46. Chihuly realleges and incorporates by reference, as if fully set forth herein, the allegations set forth in paragraphs 1-45.

47. Mr. Moi is improperly in possession of Dale's property and asserts that Dale allegedly entrusted Mr. Moi with certain of Dale's personal property for the specific purpose of safekeeping.

48. Dale demanded that Mr. Moi return that personal property but Mr. Moi has refused to return it.

49. Mr. Moi has no right to retain Dale's personal property or to use it for his personal purposes. If the jury determines that Mr. Moi did not take or retain Dale's property without permission, but finds instead that it was entrusted to him for safekeeping, Dale alleges in the alternative that Mr. Moi's use of Dale's personal property or refusal to return it is inconsistent with this alleged agreement that Mr. Moi hold that property for safekeeping.

50. Mr. Moi has willfully interfered with Dale's right to his property without lawful justification, thereby depriving Dale of possession of his property and causing injury.

51. Mr. Moi is liable for the tort of conversion.

52. Dale is entitled to an order compelling Mr. Moi to return Dale's personal property and for damages and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Dale Chihuly and Chihuly, Inc. pray for the following relief:

A. Dismissal of Plaintiff's claims with prejudice;

B. A declaration that Mr. Moi does not own any rights whatsoever in Chihuly artwork and is not a joint author and/or co-owner of any copyrights in any works authored by Dale Chihuly;

C. Injunctive relief preventing Mr. Moi from claiming authorship;

1 D. Judgment in favor of Chihuly and against Mr. Moi on Chihuly's state law claims;

2 E. An order compelling Mr. Moi to return all originals and any copies of Dale
3 Chihuly's personal property in Mr. Moi's possession, custody or control and enjoining him from
4 retaining any copies or using or disclosing any information relating to such property;

5 F. Costs of suit, including reasonable attorneys' fees, as allowed by law; and

6 G. Such other relief as the Court may deem just and proper;

7 Dale Chihuly and Chihuly, Inc. reserve the right to further amend this Counterclaim
8 following further investigation and/or discovery.

9 DATED: June 2, 2017

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1 **CERTIFICATE OF SERVICE**

2 I certify that on June 2, 2017, I served the foregoing on the following attorney(s) of
3 record of record by the method(s) indicated:

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XX Via Hand Delivery
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____ Via Facsimile
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9 I certify under penalty of perjury that the foregoing is true and correct.

10 DATED this 2nd day of June, 2017.

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